

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT DUNCAN FOSTER,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-06-411-HE
)	
JOE KEFFER, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a prisoner appearing pro se, has filed this action pursuant to 28 U.S.C. § 2241, seeking a writ of habeas corpus. United States District Judge Joe Heaton has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). In accordance with that referral, the undersigned entered an order on April 13, 2006, noting that the Court had received the petition for writ of habeas corpus, but that the Petitioner had neither paid the \$5.00 filing fee nor submitted an application to proceed *in forma pauperis*. Accordingly, the Court directed him to either pay the required filing fee or submit a completed *in forma pauperis* application on or before May 15, 2006.

As of this date, the Petitioner has neither complied with the Order, sought an extension of time in which to do so, nor has he attempted to show cause for his failure.¹ Therefore, the undersigned recommends that the petition for a writ of habeas corpus be dismissed without prejudice to refileing.

¹ The Court file reveals that the Order dated April 13, 2006 was returned marked "RETURN TO SENDER Missing or incorrect inmate." Additionally, Petitioner has not provided this Court with his change of address. See Local Civil Rule 5.1("notice of any change of address . . . of [a] pro se litigant must be given by filing the form provided by the Clerk and serving it on opposing counsel....").

RECOMMENDATION

Accordingly, the undersigned recommends that the petition for a writ of habeas corpus be dismissed without prejudice to refiling due to Petitioner's failure to either pay the required filing fee or to submit a completed *in forma pauperis* application. The Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by June 14, 2006, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. The Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 25th day of May, 2006.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE